

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Detention of)	
)	
KEVIN LINKER.)	No. 63451-8-I
)	
KEVIN LINKER,)	
)	DIVISION ONE
Appellant,)	
)	
v.)	UNPUBLISHED OPINION
)	
STATE OF WASHINGTON,)	
)	
Respondent.)	FILED: May 26, 2009

PER CURIAM. Kevin Linker appeals the trial court order denying his motion for a change of judge (affidavit of prejudice). RCW 4.12.040 grants to a party the right to a change of judge if the requirements of RCW 4.12.050 are met. RCW 4.12.050 provides that the affidavit of prejudice must be “called to the attention of the judge before he shall have made any ruling ... either on the motion of the party making the affidavit, or on the motion of any other party to the action, of *the hearing of which the party making the affidavit has been given notice...*” (emphasis added). As the State acknowledges, an affidavit of prejudice is timely even if it is filed after the judge has ruled on a motion, if the party filing the affidavit of prejudice did not have notice of the motion.¹

¹ See Marine Power & Equip. Co., Inc. v. Indus. Indem. Co., 102 Wn.2d 457, 460-61, 687 P.2d 202 (1984) (“There is no contention here that Judge Fuller made a discretionary ruling after petitioner’s joinder and of which it had been given adequate notice, prior to petitioner’s motion for change of judge. Neither is Thurston a 1-judge county. Only these criteria bring statutory timeliness requirements into play”); State ex rel. Floe v. Studebaker, 17 Wn.2d 8, 12, 134 P.2d 718 (1943) (affidavits of prejudice were timely where filed “before a notice of any argument or hearing of any kind”, in single judge county setting).

Trial judge Julie Spector denied Linker's request having previously ruled on the State's ex parte request for a finding of probable cause on the State's petition for civil commitment of Linker as a sexually violent predator. Although it is not clear if it was pointed out to the trial judge, it is undisputed that Linker had no prior notice of the ex parte motion.

Linker was entitled to a change of judge under RCW 4.12.040 and .050. Therefore, the order denying the motion for change of judge is reversed and this matter is remanded for proceedings consistent with this opinion.

For the court:



